Filed 11/30/09 Marriage of Palacios and Orduno CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re the Marriage of GLORIA PALACIOS and VICENTE ORDUNO, JR.	
VICENTE ORDUNO, JR., Respondent, v. GLORIA PALACIOS, Appellant.	F051701 (Super. Ct. No. 03CEFL06015) **OPINION**

APPEAL from a judgment of the Superior Court of Fresno County. Gary S. Austin, Judge.

Gloria Palacios, in pro. per., for Appellant.

Charles H. Soley and Julie A. Hicks for Respondent.

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After a lengthy trial of this marital dissolution case, the trial court carefully evaluated the evidence and made specific findings of fact and conclusions of law that resolved the outstanding issues between appellant Gloria Palacios (Gloria) and her former husband, respondent Vicente Orduno (Vince), including date of separation, division of community property, spousal support and attorney fees.[1] Gloria filed the instant appeal from the judgment and from a denial of her motion to correct the judgment.[2] The primary focus of her appeal, however, is not on the trial court's disposition of the issues as set forth in its statement of decision, but on a number of alleged pretrial errors that occurred earlier in the case before a different judge. Because Gloria's appeal failed to demonstrate the existence of any prejudicial error, we affirm the judgment.

FACTS AND PROCEDURAL BACKGROUND

Gloria and Vince were married in 1989. The long history of their marital dissolution litigation includes two consecutive family law cases filed in Fresno County Superior Court. The first case was case No. 555754-1, which was filed by Gloria in February of 1996 as a petition for legal separation. The second and present case is case No. 03CEFL06015, filed by Vince in October of 2003 as a petition for dissolution of

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[1] We refer to the parties by their first names for the sake of simplicity and convenience only. No disrespect is intended.

[2] Although a status-only judgment was entered in 2004 to dissolve the marriage, the record before us does not indicate the trial court formally entered a judgment following the subsequent trial of the remaining issues. Nevertheless, it is clear the statement of decision filed on July 27, 2006, constituted a final disposition of the case once Gloria's motion to correct the proposed judgment was denied on October 17, 2006. We therefore amend the trial court's order denying Gloria's motion to correct judgment to include a formal entry of judgment at that time based on the statement of decision. (See *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 700.) Gloria's appeal is therefore properly before us. We note her appeal is not from the status-only judgment, but from the final determination of the remaining issues. (See notice of appeal).

marriage. Since most of Gloria's claims on appeal involve alleged procedural irregularities, our summary is largely a procedural history of these two family law cases.

In March of 1996, shortly after Gloria filed her petition in case No. 555754-1, Vince was ordered by the court to pay $383 per month to Gloria in spousal support. Later that year, the parties reconciled and resumed their "on-again-off-again" marital relationship for several more years. Aside from a stipulation waiving spousal support that was filed by the parties in September of 1996, the case remained completely inactive or dormant until 2002.

We briefly note there were significant developments in 1999 that affected the parties' relationship. Beginning in July of 1999, Lydia Rivas (now Lydia Orduno, hereafter Lydia) moved into Vince's separate condominium and Vince and Lydia began living together as a couple. That same year, Vince purchased an engagement ring for Lydia, and Vince and Lydia purchased a Fresno home on Butler Avenue (referred to as the Butler property) and moved into that home together.[3]

In 2002, in the still pending case No. 555754-1, Vince filed a motion for bifurcation of the issue of marital status and for a status-only judgment of dissolution of his marriage to Gloria. On June 21, 2002, Judge Pro Tem Kimberly J. Nystrom-Geist granted the motion and ordered a status-only dissolution of the marriage. On July 2, 2002, Judge James M. Petrucelli vacated the "Judgment of Dissolution, Status Only" on the ground that Gloria had objected to Judge Pro Tem Nystrom-Geist hearing the matter and because the case had surpassed the five-year statute. In that same order issued on

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[3] These events led the trial court (Judge Austin) to conclude that the date of legal separation of Vince and Gloria was July 1999, rather than a later date (i.e., 2002) as argued by Gloria. We note that another significant issue in the trial below was the extent of Gloria's community property interest in the Butler property.

July 2, 2002, Judge Petrucelli, on his own motion, dismissed case No. 555754-1 in its entirety.[4]

Prior to the dismissal of case No. 555754-1, Vince had submitted a proposed status-only judgment of dissolution to the family law department of the Fresno County Superior Court. For unknown reasons, the proposed judgment was signed and subsequently entered by the court on September 5, 2002, even though it had previously been ordered stricken and the case dismissed. A conformed copy of the purported judgment was mailed to Vince.[5] One year later, on September 4, 2003, Judge Petrucelli, on his own motion, ordered the erroneous September 5, 2002, judgment of dissolution "STRICKEN FROM THE COURT FILE AND DEEMED VOID." Additionally, Judge Petrucelli ordered that "THIS CASE [CASE NO. 555754-1] STANDS DISMISSED PURSUANT TO THE JULY 2, 2002 ORDER."

On October 28, 2003, Vince filed a petition for dissolution of marriage (Fresno County Superior Court case No. 03CEFL06015). On April 12, 2004, Vince filed a motion for bifurcation of the issue of marital status and for a status-only judgment of dissolution. At that same time, Vince's attorney, Vic Sepulveda, filed a peremptory challenge to disqualify Judge Petrucelli pursuant to Code of Civil Procedure section 170.6. By the time of the continued hearing on July 20, 2004, Vince had retained a new attorney, Charles Soley, to represent him. When Gloria would not stipulate to then Commissioner

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4 Vince and Lydia testified they had scheduled a wedding ceremony for July 5, 2002, but after the above order was issued (three days before the ceremony) they were unable to obtain a marriage license at that time, so they went forward with a "spiritual" ceremony only.

5 Based on the apparent validity of the September 5, 2002 judgment, Vince and Lydia were issued a marriage license later that year, but the September 5, 2002 judgment was subsequently vacated and declared void. After a new status-only judgment of dissolution was entered in case No. 03CEFL06015, Vince and Lydia were able to obtain another marriage license on July 6, 2005.

Kalemkarian[6] hearing the matter, the parties were transferred to department 23 in front of Judge Petrucelli. Mr. Soley withdrew the Code of Civil Procedure section 170.6 peremptory challenge filed by Vince's previous attorney and the hearing proceeded on the following day.

On July 21, 2004, Judge Petrucelli granted the motion for bifurcation. He then heard testimony from Vince, as petitioner, on the issue of dissolution, and also received a stipulation from the parties for a status-only judgment of dissolution (although there remained certain points in contention). Judge Petrucelli granted the request for a status-only judgment of dissolution. It was understood that entry of that judgment would occur later, so it was ordered that the subsequent entry of the status-only judgment of dissolution would be effective, nunc pro tunc, as of July 21, 2004.[7] Notice of entry of the status-only judgment of dissolution was filed on October 14, 2004, with the parties' marital status deemed ended on July 21, 2004.

On May 2, 2005, a hearing on a discovery motion was preceded by an in-chambers conference before Judge Petrucelli in which Gloria's new attorney, Cynthia Arroyo, participated along with Vince's attorney, Mr. Soley. Mr. Soley elected to withdraw his discovery motion, but each side requested attorney fees as discovery sanctions. The parties stipulated to a trial date of September 15, 2005. They agreed to provide exhibits

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6 David C. Kalemkarian became a judge in Fresno County Superior Court in February of 2005.

7 During the July 21, 2004 hearing, both parties requested an award of attorney fees. At one point in the hearing, Judge Petrucelli told Gloria's counsel, Ms. Lund, to stop talking about property issues since he was not going to hear those issues at that time, and he insisted that she keep her client, Gloria, from making any further "outbursts" in court. After brief oral argument, Judge Petrucelli reserved the issue of attorney fees for the upcoming settlement conference that was scheduled for August 16, 2004. At the request of both counsel in August of 2004, the settlement conference was continued to August 30, 2004, and then taken off calendar. Shortly thereafter, Gloria's attorney substituted out of the case.

and trial briefs no later than 10 calendar days prior to trial, and it was so ordered. The issue of attorney fees as sanctions was reserved until the time of trial.

As the September 15, 2005, trial date approached, a number of new motions were filed by Gloria, who was representing herself at that point in the case. On May 20, 2005, Gloria filed a motion for spousal support and attorney fees with a hearing date of July 22, 2005, but the hearing was continued by the court to August 2, 2005. On June 29, 2005, Gloria filed a motion for joinder (to join Lydia as a party) that was set for August 5, 2005. On June 29, 2005, Gloria filed a motion to compel discovery, reopen discovery and continue the trial date, with a hearing date of August 12, 2005. Lastly, on June 29, 2005, Gloria filed a motion to compel production of confidential marriage license applications and marriage certificates, with a hearing date of August 19, 2005. According to Mr. Soley, Gloria failed to clear any of the hearing dates with him in advance.

On August 2, 2005, Judge Petrucelli denied Gloria's motion for spousal support and attorney fees.[8] During the hearing, Judge Petrucelli expressed considerable frustration and concern that Gloria had filed so many separate motions instead of consolidating them into a single motion, and because she apparently had not cleared the dates with Mr. Soley. He also criticized her for not listening to her prior competent counsel. The other motions filed by Gloria were continued by Judge Petrucelli to August 17, 2005, and he further ordered that there would be "no more motions filed in

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[8] We note that an order denying a request for pendente lite spousal support or attorney fees is immediately appealable under the collateral order doctrine. (11 Witkin, Summary of Cal. Law (10th ed. 2005) Husband and Wife, § 203, p. 273 [see cases cited].) Gloria failed to directly appeal from the trial court's denial of her request for attorney fees and support.

this case unless cleared with this court."[9] Trial was still scheduled to proceed on September 15, 2005.

On August 12, 2005, Gloria filed a motion for reconsideration of the August 2, 2005, order to the extent that it denied her request for attorney fees and spousal support and required her to obtain prior consent of the court to file new motions. On August 12, 2005, Gloria also filed a peremptory challenge to disqualify Judge Petrucelli pursuant to Code of Civil Procedure sections 170.1, 170.3 and 170.6. At the August 17, 2005, hearing, Judge Petrucelli found the motion for reconsideration to be legally insufficient, struck Gloria's peremptory challenge papers, and then on his own motion disqualified or recused himself from the case pursuant to Code of Civil Procedure section 170.1. The case was then ordered transferred to department 51 (Judge Kalemkarian), where the pending motions were continued to November 7, 2005, and the trial date was continued to November 15, 2005.

Gloria filed a renewed motion for reconsideration before Judge Kalemkarian. At the hearing on November 7, 2005, Gloria was represented by Attorney Cynthia Arroyo. Judge Kalemkarian denied the motion for reconsideration because Gloria had failed to present new facts, circumstances or law. As to Gloria's other motions, the request for joinder was granted; a compromise was reached for limited disclosure of certain information contained in the confidential marriage certificates; and the other motion to compel was denied.

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9 Gloria viewed the latter ruling as a permanent "prefiling order" pursuant to Code of Civil Procedure section 391.7 and as an implicit determination that she was a vexatious litigant. We do not construe the order so broadly. Since trial was only a short time away, it seems more likely that the scope of Judge Petrucelli's order was limited to additional motions that might be made in the case *prior to the impending September 15, 2005, trial date*. Also, there is no evidence in the record that Gloria was declared to be a vexatious litigant.

On November 14, 2005, Gloria filed a renewed motion for spousal support and attorney fees, and for a "reversal of the [Code of Civil Procedure section] 391.7 order." (See fn. 9 *ante*, p. 7.) On November 15, 2005, the case was assigned to Judge Austin for trial. Judge Austin continued the matter to November 29, 2005, for trial resetting. Attorney Gilbert Zavala represented Gloria at the November 29, 2005, hearing and thereafter. Trial was set for February 14, 2006. Pending motions, including Gloria's motion for attorney fees and spousal support, were continued to the new trial date. Gloria filed her trial brief on February 6, 2006, and Vince provided his trial brief to the court at the time of trial. Trial commenced on February 16, 2006, and continued on February 17, 21, 22, 23, 24, and 27, 2006. The parties filed written briefs containing their closing arguments. Throughout the trial, both parties were represented by counsel: Gloria was represented by Mr. Zavala, and Vince was represented by Mr. Soley.

On March 16, 2006, after hearing brief oral argument from the attorneys, Judge Austin rendered his decision in the case from the bench, providing a detailed explanation of the reasons for his determination of each issue, including date of separation, division of community property, spousal support and attorney fees. A written "STATEMENT OF DECISION/ORDER ON RESERVED ISSUES" was prepared and filed on July 27, 2006. Gloria filed a motion to correct the proposed judgment on September 20, 2006, which was set for hearing on October 17, 2006. Judge Austin denied the motion at the hearing on October 17, 2006. Gloria's appeal followed.

DISCUSSION

I. Gloria Failed to Meet Her Burden as Appellant

"'The burden of affirmatively demonstrating error is on the appellant. This is a general principle of appellate practice as well as an ingredient of the constitutional doctrine of reversible error.' [Citation.]" (*State Farm Fire & Casaulty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610.) The judgment or order of the lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness. (*Ibid*.) The appellant has the burden of overcoming the presumption that a judgment is correct by providing an adequate record demonstrating error (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132), and by presenting argument and legal authority, along with specific citations to the record, to support the particular claim of error (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856; *McComber v. Wells* (1999) 72 Cal.App.4th 512, 522-523). These requirements apply equally to appellants acting without an attorney. (*McComber v. Wells*, *supra*, at p. 523.)

Moreover, even if error is shown, the judgment will be upheld unless the error is shown to be prejudicial. (Cal. Const., art. VI, § 13 [no judgment may be reversed for procedural error unless it resulted in a miscarriage of justice]; Code Civ. Proc., § 475 [prejudicial error must be shown].) That being so, we do not reverse a judgment unless we conclude "it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." (*People v. Watson* (1956) 46 Cal.2d 818, 836.) "'The burden is on the appellant in every case to show that the claimed error is prejudicial; i.e., that it has resulted in a miscarriage of justice.'" (*In re Marriage of McLaughlin* (2000) 82 Cal.App.4th 327, 337.)

Applying these principles to the present case, we conclude that Gloria did not meet her burden as appellant of demonstrating both error and resulting prejudice. Although Gloria appeals from the judgment determining reserved issues as embodied in Judge Austin's statement of decision, her brief virtually ignores the particular findings of fact

and conclusions of law set forth therein, much less does it demonstrate how such findings or conclusions constituted reversible errors.[10] Therefore, in regard to the resolution of issues determined in the judgment, it would seem that Gloria has not overcome the basic presumption that the trial court's judgment was correct, since she has not brought to our attention any error in that judgment.[11]

Gloria's primary argument is that the "ripple effects" of earlier, pretrial errors ultimately deprived her of a fair trial. We find her argument to be without support. As more fully explained in the next part of our opinion, Gloria failed to show that any of the purported errors or irregularities in the pretrial proceedings prejudicially affected the outcome of any issue at trial. Remarkably, Gloria's appeal largely overlooks the critical fact that she was able to have her case heard on the merits, in a trial in which she was represented by counsel, before a fair and experienced trial judge who carefully considered all the evidence. These deficiencies are fatal to her appeal.

Because Gloria failed to meet her burden of demonstrating the existence of prejudicial error, we affirm the judgment of the trial court. (*In re Marriage of McLaughlin*, *supra*, 82 Cal.App.4th at p. 337.) We shall elaborate below.

II. Alleged Pretrial and Other Errors Nonprejudicial

In this part of our opinion, we briefly discuss the various pretrial and other errors argued by Gloria to more fully highlight the fact that she failed to establish the purported errors, if any, were prejudicial or resulted in a miscarriage of justice in the outcome of her

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[10] Indeed, Gloria failed to provide a copy of the statement of decision as part of the record on appeal.

[11] Gloria also appealed from the trial court's order denying her motion to correct the judgment, but the record on appeal does not include the moving or opposing papers in connection with that motion, and her appellate brief failed to point out any error regarding the trial court's denial thereof. Obviously, she has not met her burden as appellant in her appeal from this order.

trial. (See *In re Marriage of McLaughlin, supra*, 82 Cal.App.4th at p. 337 [error must be prejudicial]; *People v. Watson, supra*, 46 Cal.2d at p. 836 [defining prejudice]; Cal. Const., art. VI, § 13 [procedural error must result in miscarriage of justice to be reversible]; Code Civ. Proc., § 475 [error must be prejudicial to be reversible].) The claimed errors will be discussed in the same order as presented by Gloria in her opening brief—i.e., as clusters of *issues* numbered one through eight.

A. Issue No. 1

Under the heading of issue number one in her brief, Gloria argues that Judge Petrucelli's dismissal of case No. 555754-1—which dismissal she suggests was invalid due to a peremptory challenge—caused Judge Petrucelli to believe that Vince was "unfairly forced to file a second dissolution petition" and therefore Judge Petrucelli became biased against her. Gloria argues this judicial bias against her was reflected in, among other things, critical remarks directed towards her from the bench, denial of an attorney fees motion and imposition of a Code of Civil Procedure section "391.7" prefiling order.[12] Gloria argues that in these and other ways she was singled out and treated unfairly by Judge Petrucelli and the entire superior court.

Preliminarily, we dispel the notion that the dismissal of case No. 555754-1 was invalid due to a peremptory challenge. Judge Petrucelli vacated the dissolution judgment and granted the dismissal of case No. 555754-1 on July 2, 2002, *before* any peremptory challenge was filed in that case.[13] The subsequent dismissal order filed on September 4,

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[12] These two rulings were made at the hearing on August 2, 2005. Soon thereafter, on August 12, 2005, Gloria filed her peremptory challenge of Judge Petrucelli, and on August 17, 2005, he disqualified himself from the case pursuant to Code of Civil Procedure section 170.1.

[13] It was *after* the July 2, 2002 dismissal order that Vince's attorney, Vic Sepulveda, filed a motion for reconsideration and also, on July 22, 2002, filed a peremptory challenge against Judge Petrucelli. That was the first and only peremptory challenge of Judge Petrucelli in case No. 555754-1. The motion for reconsideration was taken off

2003, merely *reiterated* the prior dismissal, reciting it as a basis for vacating a judgment of dissolution that had been inadvertently entered after the case was dismissed on July 2, 2002. Furthermore, not only has the time for challenging the dismissal of case No. 555754-1 long passed, but the trial transcript shows that counsel for both parties expressly abandoned any challenge to that dismissal. We therefore reject Gloria's collateral challenge to the dismissal of the prior case.

Gloria's primary argument is that Judge Petrucelli was biased against her due to the apparent unfair impact of the dismissal on Vince, but her argument is essentially speculation.[14] Although Judge Petrucelli verbally criticized Gloria for such things as making outbursts in court and filing multiple motions that he thought should have been consolidated as one motion, the judge's comments to her on those and other occasions did not reflect a personal animus against Gloria or otherwise indicate that he could not

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calendar and the dismissal was not challenged by either party. After case No. 03CEFL06015 was later commenced, Vic Sepulveda filed a new peremptory challenge against Judge Petrucelli on April 12, 2004, under Code of Civil Procedure section 170.6, but when Charles Soley became Vince's new attorney some two months later, Mr. Soley elected to *withdraw* the prior peremptory challenge of Judge Petrucelli. Although Gloria now argues the withdrawal of the peremptory challenge should not have been accepted by the trial court (a proposition that Vince agrees with in principle), Gloria has not shown how this could have prejudiced her in any way in the trial before Judge Austin. Additionally, in light of Gloria's lack of objection in the trial court to Vince's withdrawal of the peremptory challenge or to Judge Petrucelli hearing the matter, she has no basis for complaining on appeal about proceedings to which she fully consented below. (See *Stebbins v. White* (1987) 190 Cal.App.3d 769, 782-783 [the appellant waived right to complain regarding withdrawn peremptory challenge].) Gloria's reliance on *People v. Freeman* (2007) 147 Cal.App.4th 517, review granted May 23, 2007, S150984, is misplaced, because in that case the disqualified judge actually heard the trial, while here the trial was heard by Judge Austin. That case is also not citable as precedent, since Supreme Court review was granted.

[14] For example, Gloria's suggestion that ethically improper in-chambers/ex parte meetings were taking place is unsupported by any specific citation to an adequate record, and the further supposition that Judge Petrucelli favored Mr. Soley because Mr. Soley had served as a pro tem judge, is mere conjecture.

fairly and impartially decide her case. And while it is true that Judge Petrucelli denied Gloria's motion for attorney fees and spousal support at the hearing on August 2, 2005, we do not reasonably infer from the mere denial of that discretionary motion that bias was involved.[15]

We note further that Gloria's requests for attorney fees and spousal support were renewed, or reconsideration thereof was pursued, before Judges Kalemkarian and Austin. Ultimately, attorney fees and spousal support were reserved until the time of trial before Judge Austin, at which point attorney fees were awarded to Gloria and spousal support denied. Specifically, at the conclusion of trial, Judge Austin awarded Gloria attorney fees in the amount of $12,000, which award encompassed all of Gloria's prior attorney fees requests. Gloria makes no discernable attempt in her appeal to argue or show that the trial court's award of attorney fees to her was an abuse of discretion. (See *In re Marriage of Rosen* (2002) 105 Cal.App.4th 808, 829 [abuse of discretion standard applicable]). And, returning to the particular point under consideration, we fail to see how the outcome of these motions showed that Judge Petrucelli was biased against Gloria.[16] More importantly, and fatal to her claim on appeal, Gloria has not affirmatively demonstrated

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15 Also, although *this* motion was denied by Judge Petrucelli, we note that Judge Petrucelli's July 2, 2002, order setting aside the prior dissolution judgment was, fairly speaking, a ruling that he made *in Gloria's favor*.

16 Gloria briefly states that she should have been awarded attorney fees much earlier in the case pursuant to Family Code section 2030, but her appeal fails to demonstrate error based on specific citation to an adequate record (including all papers in support of and in opposition to the attorney fees motions), relevant argument and legal authority. Moreover, aside from bare conclusions, she fails to demonstrate prejudice. Finally, it is apparent she was able to retain counsel to represent her through much of the litigation, including trial, and ultimately attorney fees were awarded to her.

how the results of these motions and other pretrial proceedings, even assuming error or irregularity existed, prejudicially affected the outcome of the trial before Judge Austin.[17]

Finally, Gloria's claim that Judge Petrucelli imposed a permanent "prefiling order" against her pursuant to Code of Civil Procedure section 391.7 (a provision of the vexatious litigant statute) is without merit. At the time of Judge Petrucelli's August 2, 2005, order directing that any additional motions would have to be cleared through the court, Gloria had recently filed a number of new pretrial motions *and* there was an impending trial date of September 15, 2005. Viewed in that narrow context, Judge Petrucelli's order was plainly intended to be limited to any additional motions filed *prior to the September 15, 2005, trial date*. Additionally, there is no evidence in the record that Gloria was declared to be a vexatious litigant. Although Gloria apparently misunderstood the nature and scope of the order and assumed it was a permanent vexatious litigant order pursuant to Code of Civil Procedure section 391.7, there is no evidence in the record before us that she was ultimately prevented from bringing any motion or that any actual prejudice resulted in the subsequent trial of outstanding issues by Judge Austin.[18]

B. Issue No. 2

Under the heading of issue number two, Gloria apparently claims that Judge Kalemkarian erred because he did not, after Judge Petrucelli disqualified himself from

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[17] Even assuming, *arguendo*, that Judge Petrucelli was potentially biased, Gloria's case was heard and decided by Judge Austin, and Gloria has not shown that the pretrial proceedings prejudiced Gloria's trial before Judge Austin in any way.

[18] In view of Judge Petrucelli's concern about the prospect of additional last-minute motions prior to the approaching trial date, and the fact that Gloria had already filed numerous pretrial motions without clearing the hearing dates with opposing counsel, we reject Gloria's assertion that the judge was somehow singling her out due to her status at that time as a self-represented party or a pro per. Since we find that the order was not prejudicial, we have not reached the question of whether it was error.

the case, reverse Judge Petrucelli's order that had denied her motion for attorney fees and spousal support and imposed a Code of Civil Procedure section "391.7" order. She also contends the hearing of her motion for reconsideration was briefly delayed because of the prefiling order, and that Judge Kalemkarian showed unfair bias towards Vince's attorney, Mr. Soley.

As to Judge Kalemkarian's denial of Gloria's motion for reconsideration, appellant has failed to show error. The motion was denied due to failure to set forth new facts, circumstances or law that could not have been timely presented at the prior hearing. Gloria's appeal has failed to show, with specific citation to the record and cogent argument, that Judge Kalemkarian erred. And, even assuming, *arguendo*, that he may have erred, Gloria has again failed to demonstrate that prejudice occurred as a result of that order or in the purported delay in getting a hearing date.

Likewise, Gloria's other contentions, including her suggestion that Judge Kalemkarian was biased toward Mr. Soley, are mere conclusory assertions lacking in intelligible supporting argument, specific citation to the record and applicable legal authority. We properly disregard such unsupported contentions and treat them as abandoned. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 [the appellant's claim is disregarded if not supported by reasoned argument and citation to authority]; *Duarte v. Chino Community Hospital*, *supra*, 72 Cal.App.4th at p. 856 [without specific citation to an adequate record, including page number, a contention is waived]; *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282 [contentions "bereft of factual underpinning, record references, argument, and/or authority" are disregarded].)

C. Issue No. 3

On November 29, 2005, following an in-chambers meeting of counsel, Judge Kalemkarian directed Mr. Zavala to file a substitution of attorney.[19] Under the

[19] A formal substitution of attorney was filed on February 7, 2006.

heading of issue number three of her appellate brief, Gloria argues the trial court's order effectively *appointed* Mr. Zavala to act as her attorney. She contends that Mr. Zavala was not really her attorney and the trial court had no right to appoint him to represent her against her wishes. Gloria believes she should have been able to personally attend the in-chambers meeting, not Mr. Zavala, and she argues that Mr. Zavala's appointment was harmful to her case because he elected to withdraw certain issues from the case without her authorization (i.e., bigamy and fraud) and because the appointment curtailed her ability to file motions on her own behalf.

The premise of Gloria's entire argument is that the trial court *ordered* the *appointment* of Mr. Zavala as her attorney. However, the record fails to support that extraordinary claim, and nothing in Gloria's appeal even remotely substantiates it. The order directing Mr. Zavala to file a Substitution of Attorney was nothing more than that, and it evidently reflected the trial court's assessment from the in-chambers meeting that Mr. Zavala was already representing Gloria in the case. In any event, the order did not *appoint* Mr. Zavala or otherwise restrict Gloria's right to hire any attorney of her choice.

D. Issue No. 4

In her issue number four, Gloria contends that Judge Petrucelli was partial to Vince's attorney, Mr. Soley. Gloria recounts the outcome of several motions and speculates that the unfavorable rulings were because of this partiality. She also argues, without citing to any support in the record, that Mr. Soley was exclusively admitted to chambers to discuss an ex parte application, but that Gloria was not given notice thereof or invited to attend. Regarding these matters, we once again conclude that she has failed to meet her burden of affirmatively demonstrating error by specific citation to the record, legal argument and supporting authority. (See *Benach v. County of Los Angeles*, *supra*, 149 Cal.App.4th at p. 852; *Duarte v. Chino Community Hospital*, *supra*, 72 Cal.App.4th at p. 856 [without adequate record demonstrating error, the contention is waived]; *People*

v. Dougherty, supra, 138 Cal.App.3d at p. 282 [contentions "bereft of factual underpinning, record references, argument, and/or authority" are disregarded].)

E. Issue No. 5

Under the heading of issue number five, Gloria argues that the trial court neglected to conduct a settlement conference and, secondly, that her attorney, Mr. Zavala, left out certain issues at trial, such as bigamy and fraud. On the first point, the holding of a settlement conference is discretionary, not mandatory. (Cal. Rules of Court, rule 3.1380(a).) On the second point, it is axiomatic that matters not asserted below will not be considered for the first time on appeal. (*Ochoa v. Pacific Gas & Electric Co.* (1998) 61 Cal.App.4th 1480, 1488, fn. 3.) In addition to this fundamental procedural obstacle, we have no adequate record before us from which to assess Gloria's contention that such issues were "left out." Gloria provides no citation to any specific pleading or other part of the record to confirm what specific issues or claims, if any, Gloria may have been asserting in this case besides those that were actually submitted to Judge Austin at trial. Her contention cannot be considered in the abstract. An appellant must provide an adequate record demonstrating error. (*Aquilar v. Avis Rent A Car System, Inc*., *supra,* 21 Cal.4th at p. 132.) Also, no prejudice is indicated, since Gloria fails to explain what difference the assertion of these allegedly "left out" issues would likely have had at trial.

To the extent Gloria is claiming that her attorney, Mr. Zavala, entered an *unauthorized* stipulation to drop certain issues at trial, she has failed to support that claim by a specific citation to the record. We note that, in partial conflict with Gloria's claim, the trial brief filed by Mr. Zavala expressly referred to the prenuptial agreement and fraud claims along with numerous other issues in the case.[20] Certainly, Vince's purported false

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[20] While we agree with Gloria that the issue of bigamy was not specifically raised at trial, she has failed to argue that the outcome of trial would have been any different even if that issue had been argued and proven.

representations were explicitly argued by Mr. Zavala at trial by, for example, his closing arguments that Vince was still married to Gloria when Vince represented to others in connection with property transactions that he was either single or married to Lydia. Moreover, even assuming *hypothetically* that Mr. Zavala did stipulate to not pursue a bigamy theory at trial, no reason is given why such a stipulation would not have constituted a proper tactical decision in this case as opposed to a wholesale forfeiture of Gloria's substantial rights without consent. (See *Blanton v. Womancare, Inc*. (1985) 38 Cal.3d 396, 404 [attorney not authorized, without consent, to divest client of substantial rights].)

Judge Austin heard all of the evidence offered at the trial and considered the attorneys' written and oral arguments. He then made detailed findings, with thorough explanation, as he reached his conclusions on the ultimate issues of date of separation, the characterization and division of the community property, spousal support and attorney fees. Multiple facts and circumstances were considered on each issue. To the extent Gloria suggests that the statement of decision did not expressly or adequately address one or more issues, her remedy was to object to the statement of decision by pointing out such alleged deficiencies in the trial court. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1132-1134, 1138.) Gloria has failed to demonstrate on appeal that she ever made such a specific objection to the statement of decision or that she complied with Code of Civil Procedure section 634.[21] Therefore, to the extent Judge Austin did not expressly mention an issue (e.g., fraud or bigamy), and assuming such issue was actually tendered by Gloria, we may infer that it was resolved in Vince's favor or was not material to the trial court's decision. (*In re Marriage of Arceneaux*, *supra*, at p. 1138.) Moreover,

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21 Gloria did file a motion to correct the proposed judgment, but we have no record of the particulars of that motion. Judging from the matters discussed at the hearing on October 17, 2006, Gloria's concerns were with the division of the community property, which issues were thoroughly covered in Judge Austin's statement of decision.

Gloria has failed to demonstrate that any of the findings or conclusions of Judge Austin, whether express or implied, were in error, and from our review of the entire record and of Judge Austin's statement of decision, there is no question that each determination was supported by substantial evidence.[22]

F. Issue No. 7

In her issue number seven, Gloria asserts that Mr. Soley had a "'special relationship'" with Judge Petrucelli and with the family law department of the superior court that should have been disclosed—namely, Mr. Soley had served as a judge pro tem. Gloria fails to support this assertion by specific citation to the record, but even assuming Mr. Soley had served in that capacity, Gloria fails to present any argument or legal authority to support her contention that this fact and the failure to disclose it constituted error or created any bias or prejudice against her.

Gloria further argues, in broad and conclusory fashion, that the Fresno County Superior Court singled her out and treated her differently than other litigants passing through the superior court. We disagree. Although Gloria has experienced disappointments in the course of this family law litigation (including having motions denied that she believed should have been granted and receiving criticisms from Judge

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[22] Gloria makes no intelligible claim or argument that Judge Austin's findings were not supported by substantial evidence. Gloria does argue the trial court erred in its failure to consider the factor of domestic violence on the issue of spousal support. The record shows that Judge Austin *did* consider the testimony on that issue, but found it to be so vague that it was not credible or significant. Gloria fails to demonstrate that this finding was error. As to Judge Austin's failure to reference the prenuptial agreement in his statement of decision, Gloria fails to indicate how that agreement would have made any difference to the outcome of any issue. That is, no argument is made that the trial court's alleged omission had any effect on the case, or that it resulted in any prejudicial error. We disregard contentions not supported by argument. (*People v. Crittenden* (1994) 9 Cal.4th 83, 153.)

Petrucelli that she did not think were warranted), in the final analysis, she has failed to show that she was *singled out* or that she failed to receive a fair trial on the merits.

G. Issue No. 8

No intelligible claim of specific error is presented here, and thus her comments on the merits of electronic recordings may, for purposes of this appeal, be disregarded.

For all the reasons set forth herein, we conclude that Gloria's appeal fails to meet her burden, as appellant, of affirmatively demonstrating the existence of prejudicial error, and therefore the judgment below must be upheld.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to Vince.

_____
Kane, J.

WE CONCUR:

_____
Vartabedian, Acting P.J.

_____
Levy, J.